IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4553 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No

2. To be referred to the Reporter or not? : NO
No

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? No :

MEGHJI PETHARJ KUSHT NIVARAN DHAM

Versus

LALITABEN RANCHHODBHAI GOHIL

Appearance:

1. Special Civil Application No. 4553 of 1988
NOTICE SERVED for Petitioner
MR PREMAL JOSHI, AGP for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 20/11/2002

ORAL JUDGEMENT

By filing this petition under Article 227 of the Constitution, the petitioner i.e. Shri Meghji Pethraj

Kusht Nivaran Dham, Bhavnagar, has prayed to set aside order dated July 20, 1987, passed by the Controlling Authority under the Payment of Gratuity Act, 1972, Bhavnagar, by which the petitioner is directed to pay a sum of Rs. 20,253/- to the heirs and legal representatives of deceased employee Ranchhodbhai V.Gohil as well as order dated May 24, 1988, passed by the Appellate Authority appointed under the provisions of the Payment of Gratuity Act, Rajkot, by which the order passed by the Controlling Authority is confirmed.

2. The petitioner is a charitable institution, and is running a hospital for those who are affected by leprosy. From the record of the petition it is not clear whether the petitioner-Institution is registered under the provisions of the Bombay Public Trusts Act, 1950, but in paragraph 1 of the petition, it is averred that the petitioner has accepted Pension-cum-Gratuity Scheme as applicable to the Government employees. Deceased Ranchhodbhai Gohil was employed as a driver in the petitioner-Institution since May 20, 1960. He expired on October 28, 1984. He was receiving salary of Rs. 1020/-per month. After his death, his four heirs and legal representatives submitted an application to the petitioner-Institution in the prescribed form and claimed gratuity payable to them. The application submitted by the heirs was not favourably considered by the petitioner. Therefore, the heirs made an application to the Controlling Authority, Bhavnagar, constituted under the provisions of the Payment of Gratuity Act, 1972 ("the Act" for short), and prayed the Authority to direct the petitioner to pay a sum of Rs. 20,253/- being the amount of gratuity payable to deceased Ranchhodbhai Vasrambhai Gohil. On service of notice, the petitioner appeared before the Authority, and contended that as the provisions of the Act were not applicable to the petitioner-Institution, the application was liable to be dismissed.

3. On consideration of the materials placed before it, the Controlling Authority concluded that the provisions of the Act were applicable to the petitioner-Institution. In view of the said conclusion, the Controlling Authority by an order dated July 20, 1987 directed the petitioner to pay a sum of Rs. 20,253/-to the heirs and legal representatives of the deceased. Feeling aggrieved by the said order, the petitioner moved the Appellate Authority constituted under the provisions of the Act. The appeal came to be dismissed by order dated May 24, 1988, which has given rise to the present petition.

4. Initially the petitioner was represented by its learned lawyer Shri H.K.Rathod. On elevation of Shri Rathod as a Judge of this Court, the office issued notice to the petitioner calling upon it to make necessary arrangement for its appearance, either through a lawyer or through a properly constituted representative. The notice issued by the office has been duly served on the petitioner, but the petitioner has not made any arrangement for its appearance, either through a lawyer or through a properly constituted representative. The petition is very old one and was filed in the year 1988. Under the circumstances, I have proceeded to dispose of the same on merits with the assistance of Shri Premal Joshi, learned Assistant Government Pleader, who appears on behalf of the Controlling Authority.

5. It may be noted that the application before the Controlling Authority under the provisions of the Act was filed by four persons claiming to be the heirs and legal representatives of the deceased i.e. (1) Smt. Lalitaben Ranchhodbhai Gohil, who is impleaded as respondent No.1, (2) Mr. Harshadkumar Ranchhodbhai Gohil, (3) Mr. Jagdishkumar Ranchhodbhai Gohil, and (4) Ms. Ramilaben Ranchhodbhai Gohil. The direction given by the Controlling Authority to the petitioner to pay a sum of Rs. 20,253/- to the heirs and legal representatives of the deceased operates in favour of all the heirs and legal representatives of the deceased. However, the petitioner has chosen to implead only Smt.Lalitaben Ranchhodbhai Gohil as respondent No.1, and has not impleaded other heirs and legal representatives of the deceased in whose favour also the order of the Controlling Authority operates. It is well settled that before passing any order, the persons who are likely to be affected, must be heard. If the petition is allowed, it is bound to affect adversely the three heirs and legal representatives of the deceased, who are not impleaded as respondents in the petition. Under the circumstances, the petition is liable to be dismissed on the ground of non-joinder of necessary parties. Even otherwise, the only point urged in the petition is that the provisions of the Act are not applicable to the petitioner-Institution because the petitioner-Institution is neither a shop nor a commercial establishment within the meaning of the provisions of The Bombay Shops and Establishments Act, 1948. In my view, the point urged in the petition is answered against the petitioner by a Division Bench judgment of this Court rendered in case of Sunni Muslim Wakf Committee v. Abbasali Gulamali, 1980(2) G.L.R. 253. In the said case, employees of

Sunni Muslim Wakf Committee, which is a Trust registered under The Bombay Public Trusts Act, 1950, had made application to the Controlling Authority under the Act claiming gratuity. The claim made by the workmen was resisted on the ground that the provisions of the Payment of Gratuity Act, 1972 were not applicable to it, and that therefore, it was under no liability to pay gratuity to the workmen. The Controlling Authority had recorded its findings against the petitioner and allowed the claims made by the workmen. The appeal filed by the petitioner before the Appellate Authority was dismissed. Thereupon, Sunni Muslim Wakf Committee had approached the High Court by way of filing petition under Article 226 of the Constitution. While dismissing the petition, the Division Bench has held that there are three tests to determine whether a particular activity amounts to an "industry", and according to the Division Bench, they are as follows: (i) there must be a systematic activity, (ii) there must be co-operation between the employer and his employee, and (iii) there must be production of goods or services. The Division Bench has further held that if these three tests are answered in the affirmative in respect of a particular activity, it would amount to an "industry" as laid down in Section 2(j) of the Industrial Disputes Act. It may be stated that the Division Bench has evolved the above referred to three tests on the basis of judgment of the Supreme Court in Banglore Water Supply and Sewerage Board v. A.Rajappa and Others, AIR 1978 SC 548. After applying the above referred to three tests to the activities being carried on by Sunni Muslim Wakf Committee, the Division Bench held that the provisions of the Payment of Gratuity Act were applicable to it. Applying the ratio laid down by the Division Bench to the facts of the present case, I am of the view that all the three tests laid down by the Division Bench are satisfied to the activities being carried on by the petitioner-Institution and it will have to be held that the petitioner-Institution is an "industry" as laid down in Section 2(j) of the Industrial Disputes Act, and consequently the provisions of the Payment of Gratuity Act, 1972 are applicable to it. There is no manner of doubt that the petitioner-Institution has undertaken a systematic activity of treating those who are affected by leprosy. There is also no manner of doubt that there is co-operation between it and its employees and there is production of services. Under the circumstances, the view taken by the Controlling Authority as confirmed by the Appellate Authority that the provisions of the Act are applicable to the petitioner-Institution, cannot be regarded as illegal. Moreover, as noticed earlier, the petitioner has accepted the Pension-cum-Gratuity Scheme

as applicable to the Government employees. The gratuity cannot be included for all purposes as part of pension, as pension and gratuity are conceptually different from each other. By accepting the scheme of Pension-cum-Gratuity, the petitioner-Institution has treated itself as an establishment. It is relevant to notice that the Payment of Gratuity Act, 1972 provides for payment of gratuity to persons employed in factories, mines, oilfields, plantations, ports, railway companies, shops and certain other establishments employing ten or more persons or for matters connected therewith or incidental thereto. Having regard to the object of the Act and the activities undertaken by the petitioner-Institution, I am of the confirmed opinion that the petitioner-Institution is an "industry", and the provisions of the Act are applicable to it. Therefore, I do not find any substance in the petition and the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. There shall be no orders as to costs. The interim relief granted earlier is hereby vacated.

(J.M.Panchal,J.)

(patel)